

Rec'd 12/14/00



DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333-0001

December 12, 2000

REPLY TO  
ATTENTION OF

Mr. Steven Baggett, Senior Project Manager  
Headquarters, U.S. Nuclear Regulatory Commission  
Office of Nuclear Material Safety and Safeguards  
Spent Fuel Project Office  
Washington, DC 20555-0001

Dear Mr. Baggett,

This is in reference to your reply (September 26, 2000) to my letter of September 12, 2000 asking for an exemption to certain parts of Title 10, Code of Federal Regulations, Part 71.

After consultation with my colleagues, I believe that we should clarify somewhat that which we are requesting. The Army self transports much of its own materiel. This self transportation of licensed material is performed by military and civilian personnel employed by the U.S. Army. The U.S. Department of Transportation has allowed that exclusive use transportation by the Department of Defense (military vehicle shipments) are not subject to the Hazardous Materials Regulations of Title 49, CFR.

What we are asking for is a clarification of 10 CFR Part 71.5(b); i.e., **does 10 CFR Part 71.5(b), as worded, specifically tie the Army down to complying with Title 49, CFR, applicable parts 170-189 even though we are self-transporting, acting in the National Defense, and are apparently not subject to the HMR?**

If your reply to us is "yes," then we will move forward on a request for an exemption to Part 71.5(b), as worded and as stated in our memorandum of 12 September 2000. We will do the research and provide the safety information and environmental report you requested in your reply.

If the answer is "no", then we will presume that the Army is relieved of compliance with the regulation; however, we will only make such a presumption after receiving your decision in writing and coordinating the response with our point of contact in the U.S. Department of Transportation.

11/23/04

Thank you for your assistance in this matter. For further information please contact me at (703) 617-9475, facsimile (703) 617-9469, or by electronic mail at ManfreJ@alexandria-emh1.army.mil.

Sincerely,



John G. Manfre  
Health Physics Manager  
Safety Office

Enclosure

Copies Furnished:

Headquarters, Department of the Army, ATTN: DACS-SF  
(COL Cherry), 200 Army Pentagon, Washington, DC 20310-0200  
Comander, Military Traffic Management Command, Transportation  
Engineering Agency, ATTN: MTMC-TEA, 720 Thimble Shoals  
Boulevard, Suite 130, Newport News, Virginia 23606-2574  
Commander, U.S. Army Materiel Command Logistics Support  
Activity, ATTN: AMXLS-TP-T (Ms. Gorba), Tobyhanna Army Depot,  
Tobyhanna, Pennsylvania 18466  
Commander, U.S. Army Tank-automotive and Armaments Command-Rock  
Island, ATTN: AMSTA-LC-RS (G. Ziegler), Rock Island, IL  
61299-6000  
Director, Office of Hazardous Materials Standards, U.S. Army  
Department of Transportation/RSPA, ATTN: DHM-10 (Mr. Wendell  
Carviker), 400 7<sup>th</sup> Street, SW, Washington, DC 20590-0001



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 26, 2000

John G. Manfre, Health Physics Manager  
Safety Office  
Department of the Army  
Headquarters, U.S. Army Materiel Command  
5001 Eisenhower Avenue  
Alexandria, VA 22333-0001

SUBJECT: EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR PART 71  
PURSUANT TO 10 CFR 71.8

Dear Mr. Manfre:

Your letter dated September 12, 2000, to the Director of the Office of Nuclear Material Safety and Safeguards has been forwarded to the Spent Fuel Project Office for response. Your request will involve an exemption from certain requirements of 10 CFR Part 71 pursuant to 10 CFR 71.8. We have performed a preliminary review of your request under the provisions of 10 CFR 71.8. However, your request does not provide a sufficient safety basis for us to make a determination. Therefore, we recommend that you provide additional information to support the exemption request. The information we believe is needed is identified in NUREG 1556, Volume 5, Appendix Q and in 10 CFR 51.30. This NUREG may also be helpful in preparing your response.

Please also note that approval of the proposed action requires the U.S. Nuclear Regulatory Commission (NRC) to prepare an Environmental Assessment (EA) [10 CFR 51.30]. The categorical exclusion from the need to prepare EAs that normally applies to package approvals does not apply when the approval is issued under an exemption. We need certain environmental information to prepare the EA. Accordingly, provide an Environmental Report (ER) that addresses the topics identified in 10 CFR 51.30 with respect to the proposed actions. You may find 10 CFR 51.60 helpful in developing your ER. To the extent this information has been provided in documents already submitted to NRC, you may provide the appropriate references in the ER.

Lastly, you must operate your transportation program in compliance with NRC regulations, until an exemption, if granted, is issued authorizing the proposed activity.

If you have any questions regarding this matter, please feel free to contact me at (301) 415-8584.

Sincerely,

Steven Baggett, Senior Project Manager  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

*send to TACOM-RI*

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September 12, 2000

Director  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Sirs:

This is in reference to Title 10 CFR 71, subject: Packaging and Transportation of Radioactive Material. We are requesting an exemption to the requirements of the Hazardous Materials Regulations (HMR, 49CFR Parts 171-180) per 10 CFR section 71.5(b).

The Army is an organization on the move. Whether for the purpose of national defense, training or maintenance, their weapon systems are highly transportable. Some of these weapons systems have low level radioactive items attached that can be classified as "instruments or articles." When the Army transports these weapon systems, they are not generally packaged per many of the requirements of HMR. The Department of Transportation (DOT) has informed us that when transporting hazardous materials in military vehicles operated by military personnel solely for noncommercial military purposes, the Army is not subject to the Hazardous Materials Regulations of 49 CFR Parts 171-180.

However, Title 10 CFR 71.5(b) apparently invalidates this exemption, stating that, "If DOT regulations are not applicable to shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations."

Therefore, we request and apply for modification, waiver, or exemption from the requirements of the HMR in accordance with section 71.5(b) for radioactive material on weapon systems transported by the U.S. Army when transported materials in military vehicles solely for noncommercial military purposes.

The point of contact is Mr. Gavin Ziegler, (309) 782-2995.

Sincerely,



JOHN G. MANFRE  
Health Physics Manager  
Safety Office

Copies Furnished:

Commander, Military Traffic Management Command, Transportation  
Engineering Agency, ATTN: MTMC-TEA), 720 Thimble Shoals  
Boulevard, Suite 130, Newport News, Virginia 23606-2574  
Mr. Wendell Carviker, Director, office of Hazardous Materials  
Standards, U.S. Army Department of Transportation/RSPA  
(DHM-10), 400 7<sup>th</sup> Street, S.W., Washington, DC 20590-0001  
Commander, U.S. Army Materiel Command Logistics Support  
Activity, ATTN: AMXLS-TP-T (Ms. Gorba), Tobyhanna Army Depot,  
Tobyhanna, Pennsylvania 18466